

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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November 18, 2004

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GSBCA 16512-RELO

In the Matter of GINEVRA A. HIGHTOWER

Ginevra A. Hightower, Middleburg, FL, Claimant.

Shirley Lee Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**DeGRAFF**, Board Judge.

Ginevra A. Hightower is an employee of the Department of Defense (DoD). In late 2003, DoD transferred Ms. Hightower from one permanent duty station to another and authorized her to incur reimbursable relocation expenses, including real estate transaction expenses. Ms. Hightower sold her home at her old duty station and asked DoD to reimburse her closing costs, including her real estate agent's sales commission, a loan origination fee, and a mortgage broker's fee for two percent of the amount of the purchaser's loan. DoD initially decided to reimburse Ms. Hightower for all of these items. Later, DoD decided not to reimburse the mortgage broker's fee and Ms. Hightower asked us to review this decision.

Ms. Hightower believes DoD should reimburse the mortgage broker's fee pursuant to Joint Travel Regulation (JTR) C14002-A.1, which authorizes reimbursement of a "broker's fee or real estate commission for services in selling the residence." The broker's fee covered by this JTR provision is a real estate broker's fee. The provision does not authorize reimbursement of a mortgage broker's fee, which is not paid for services in selling the residence. Willo D. Lockett, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722. Thus, JTR C14002-A.1 does not authorize DoD to reimburse Ms. Hightower for the mortgage broker's fee.

A mortgage broker's fee is a charge similar to a loan origination fee. Lockett; Philip R Merkel, GSBCA 14668-RELO, 98-2 BCA ¶ 20,094. Therefore, Ms. Hightower's claim is governed by JTR C14002-A.4, which authorizes reimbursement of loan origination fees and similar charges so long as the charges are customarily paid by the seller of a residence at the old permanent duty station and provided the charges do not exceed one percent of the purchaser's loan amount. If such a charge exceeds one percent of the loan amount, the lender must itemize its administrative charges and the employee making the claim must show the

higher rate is customarily charged in the area and does not include prepaid interest, points, or a mortgage discount.

It is up to the employee making a claim to establish what is local custom. If a great majority of sellers in an area assume part of purchasers' closing costs, such payments are customary. James E. Miller, GSBCA 16123-RELO, 04-1 BCA ¶ 32,450 (2003). Regarding whether the payment of a mortgage broker's fee was customary at Ms. Hightower's old duty station, a DoD finance office employee told Ms. Hightower mortgage broker fees are "normally a buyer's expense." The finance office employee is not located near Ms. Hightower's old duty station, however, and we do not know what information the employee had available concerning the custom there. Ms. Hightower submitted a letter from a DoD realty specialist who said the payment Ms. Hightower made was reasonable in amount, customary, and appropriate for the locality. Unfortunately for Ms. Hightower, this letter does not support her claim because the realty specialist thought the claim was for a real estate broker's fee, not a mortgage broker's fee. Ms. Hightower also submitted a letter from her real estate agent which offered an explanation of the closing costs Ms. Hightower paid. Ms. Hightower paid the mortgage broker's fee on behalf of the person who purchased her house, and the real estate agent said "the vast majority of the time" in the area of Ms. Hightower's old duty station, a lender will allow a seller of a property such as the one owned by Ms. Hightower to pay these closing costs on behalf of a purchaser and the seller will do so.

The letter from Ms. Hightower's real estate agent says sellers in the area of her old duty station pay part of their purchasers' closing costs the "vast majority" of the time, which suggests the practice is to be expected in a commanding percentage of sales similar to the one here. In the absence of any persuasive contrary information, the real estate agent's statement is sufficient to establish Ms. Hightower's payment of the purchaser's mortgage broker's fee was customary.

Even though Ms. Hightower's payment of a mortgage broker's fee was customary, the amount of her reimbursement is limited by JTR C14002-A.4. There is no evidence to show the lender itemized its administrative charges, or to show a rate in excess of one percent is customarily charged in the area, or to show whether the rate included prepaid interest, points, or a mortgage discount. Thus, Ms. Hightower's reimbursement is limited to one percent of the purchaser's loan amount.

DoD should recalculate the amount of Ms. Hightower's reimbursable real estate expenses and allow her claim for a mortgage broker's fee for one percent of the purchaser's loan amount. Before DoD can do this, however, Ms. Hightower will have to tell DoD whether the loan origination fee she paid at closing was also paid on behalf of the purchaser. If so, DoD's calculation of her reimbursable real estate expenses will have to disallow her claim for the loan origination fee, because the loan origination fee duplicates the mortgage broker's fee and the two combined cannot exceed one percent of the purchaser's loan amount. Lockett; Merkel.

The claim is granted for one-half of the mortgage broker's fee claimed by Ms. Hightower. However, if Ms. Hightower paid the loan origination fee on behalf of the

purchaser, DoD cannot reimburse her for the loan origination fee in addition to the mortgage broker's fee.

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MARTHA H. DeGRAFF  
Board Judge